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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962.

No. 977

MITSUBISHI INTERNATIONAL CORPORATION,

Petitioner,

against

STEAMSHIP *"PALMETTO STATE"* and STATES MARINE CORPORATION OF DELAWARE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

MITSUBISHI INTERNATIONAL CORPORATION,
Petitioner,

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STEAMSHIP "*Palmetto State*" and STATES MARINE CORPORATION OF DELAWARE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

Petitioner prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Second Circuit.

Opinions Below.

The opinion of the United States Court of Appeals for the Second Circuit (R. Vol. II, p. 1) is reported at 311 F. (2d) 382; the denial of the petition for rehearing by the Court of Appeals (R. Vol. II, p. 17) is not officially reported. The opinion of the United States District Court for the Southern District of New York (R., Vol. I, p. 79) is not officially reported.

Jurisdiction.

The jurisdiction of this Court is invoked under 28 U. S. Code, Sec. 1254(1).

The grounds on which the jurisdiction of this Court is invoked are that the Court of Appeals (a) has decided an important question of federal law which has not been, but should be, decided by this Court; and (b) has disregarded the decisions of this Court prescribing the rule for the interpretation of statutory terms, substituting therefor a novel rule.

The date of the judgment of the Court of Appeals for the Second Circuit sought to be reviewed and the date of its entry is December 4, 1962 (R., Vol. II, pp. 7, 8). Petitioner's petition for rehearing was denied on January 16, 1963, and an order thereon was entered on the same date (R., Vol. II, pp. 17, 18).

Questions Presented.

1. Is a carefully engineered oak timbered, steel bolted structure, 16 feet long, 6 feet high and 5 feet wide containing a 32½ ton steel roll intended to roll cold steel products, a "package" within the meaning of Section 4(5) of the U. S. Carriage of Goods by Sea Act (46 U. S. Code, Sec. 1304(5)).

2. Has not the decision of the Court of Appeals holding such a structure to be a "package", disregarded the decisions of this Court prescribing canons of construction for determining the meaning of words contained in a federal statute, and thus decided a federal question in conflict with applicable decisions of this Court.

3. Is not the decision of the Court of Appeals characterizing as a "package" a steel roll of such unusual weight and dimensions, in conflict with the decisions of this Court that statutes should be construed so as not to bring about unreasonable and absurd results.

Statute Involved.

The statutory provision involved in this suit is:

Section 4(5) of the U. S. Carriage of Goods by Sea Act (46 U. S. Code, Section 1304(5)), which provides:

> "Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding $500 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading."

Statement.

This is an action in admiralty to recover from an ocean carrier for cargo damage. The District Court had jurisdiction under 28 U. S. Code, Sec. 1333 (1).

On October 21, 1958, at the port of New York, petitioner delivered to respondent, three boxed steel rolling mill rolls, intended for use in a Japanese steel mill, for carriage on respondent's vessel "Palmetto State", to Kobe, Japan. Each roll weighed 32½ tons, the dimensions of the box being 16 ft. long, 6 ft. high, and 5 ft. wide. The rolls being "heavy lift" cargo which the ship's loading gear was

incapable of handling, respondent employed a floating crane which transferred the three rolls from a lighter to the ship's 'tweendeck (R. Vol. I, pp. 79-80). Petitioner was required to pay respondent an extra charge of approximately $4,000 for the use of the lighter and floating crane (R. Vol. I, p. 21).

Despite the combined weight of the three steel rolls—approximately 97 tons—respondent used no chains or steel lashings to secure them in the ship's 'tweendeck, as is customarily done, but relied solely upon pieces of lumber to shore and maintain the rolls in position as protection against the athwartship rolling movement of the ship (R. Vol. I, p. 81). Under wind and sea conditions which the Chief Officer testified were such as the ship might be expected to encounter, the three rolls broke adrift and sustained extensive damage, requiring their return to the mill at Pittsburgh for reconditioning (R. Vol. I, pp. 81-82).

The steel rolls were prepared for shipment at Pittsburgh by the manufacturer. Each roll was secured to a base platform, or skid, constructed of three 8" x 8" oak timbers, 16' in length, with four 3" x 4" spreaders, covered with 2" x 12" spruce flooring. Two 8" x 8" oak timbers lay side by side at each end of the flooring, on top of which was placed a third timber of that size upon which the necks of the rolls rested. The three lower timbers of the cradle were secured by three steel rods which extended through the timbers of the base platform flooring where they were anchored by nuts and steel plate washers. The upper section of the cradle was made by an 8" x 8" oak timber intended to accommodate the roll in its form. This timber was secured by two steel saddle rods which extended from the top of the timber through the three lower members and flooring, where they were anchored by nuts and steel plate

washers. There were also two 8" x 8" oak timbers which were placed in a fore and aft position between the shoulder of the roll and the lower timbers of the cradles intended to resist end thrust movement (R. Vol. I, p. 80).

The outer casing of the rolls was designed to protect them from the elements and possible scratching of their highly polished surfaces (R. Vol. I, p. 31). The frame work of the outer boxes for the rolls was made of 3" x 4" studding, the corners being braced with 2" x 8" diagonal spruce braces. The timbers were secured on top with a double 2" x 4" plate; the roof was supported by double 2" x 4" boards, spaced at intervals. The assembly was then covered by waterproof paper and finally by 2" x 12" spruce lumber (R. Vol. I, p. 80).

A total of thirteen 8" x 8" oak timbers and fourteen steel rods were used in the construction of the cradles and base platform of each roll, the details being shown on petitioner's Exhibit 11 (R., Vol. I, p. 36).

While the District Court held that the damage was attributable to respondent's negligence in failing adequately to secure the heavy rolls in stowage, it limited petitioner's recovery to $500 per roll, a total of $1,500, in respect of its actual loss of $31,000. The District Court concluded that because each 32½ ton roll was enclosed in a wooden sheathing, they were "packages" within the purview of Sec. 4(5) of COGSA (46 U. S. Code, Sec. 1304(5) (R., Vol. I, pp. 82-84).

The Court of Appeals affirmed the judgment of the District Court, ruling that:

> "• • • an article completely enclosed in a wooden box prepared for shipment is a 'package' within Section 4(5) of COGSA, regardless of the size and weight of the package" (R., Vol. II, p. 6).

Reasons for Granting the Writ.

A.

The question presented is of vital importance to shippers of cargo who suffer losses through negligence of ocean carriers. Here, although the petitioner suffered a loss of $31,000 as a result of the respondent's negligence, the courts below have held that it can recover but $1500. There is a great volume of heavy-lift cargo being transported in foreign commerce.

B.

There is a conflict between the various judges of the Court of Appeals for the Second Circuit on the question presented so that determination of the question depends on the personnel of the panel of the Court of Appeals judges who may sit in any particular case.

In *Gulf Italia Company* v. *The Exiria,* 160 F. Supp. 956 (S. D. N. Y.), affirmed *sub nom, Gulf Italia Co. v. American Export Lines, Inc.,* 263 F. (2d) 135 (2 Cir., 1959), a semi-boxed tractor weighing 43,319 pounds became damaged as the result of an ocean carrier's negligence. (In the present case each boxed steel roll weighed approximately 66,000 pounds.) In holding that the semi-boxed tractor was not a "package" within the meaning of the Carriage of Goods by Sea Act, the District Court said (160 F. Supp. 956, at p. 959):

> "Here, the item damaged would not be considered a 'package' under any ordinary construction of the term. A large tractor, weighing 43,319 pounds, is not within the purview of the layman's view of a 'package'. The respondent herein certainly was well aware of the nature and value of the tractor. Under these circumstances I cannot believe that Congress intended the carrier to be able to limit its

liability for its own negligence to a pittance of only $500."

In discussing the question of whether fully enclosing such a piece of cargo with a wooden cover is a material factor in determining the "package" issue, the District Court said (pp. 959-960):

> "However, I do not believe that the mere fact that an item is in some way prepared for shipment will thereby effect the result of making that item, as so prepared, a package within the meaning of the Carriage of Goods by Sea Act. To adopt such a construction it would have to be said that a shipper who attempts to minimize possible harm to his property by putting protective covering on sensitive parts, would be in a worse position than a shipper who cavalierly makes no effort to reduce the possibility of loss not only to himself but to the carrier. Such result would hardly foster good commercial practices."

The Court of Appeals for the Second Circuit, in affirming the decision, said (263 F. (2d) 135, at p. 137) (1959):

> "Section 4(5) of the Act divides 'the transportation of goods' into two categories: 'packages' and 'goods not shipped in packages'. Plainly the tractor was not shipped *in* a package, unless the covering of certain portions of it make it a 'package' within the meaning of the Act. Apparently the appellant contends that any preparation of goods for ocean transportation converts the goods into a 'package'. Such a construction of the section would cause 'a shipper who attempts to minimize possible harm to his property by putting protective covering on sensitive parts,' to be placed in a worse position than a shipper who makes no effort to reduce the possibility of loss from inclement weather or pilfering. We agree with

> Judge Cashin that 'such result would hardly foster good commercial practices.' *Any test dependent upon extent of external covering would lead to uncertainty and increase litigation.* We cannot believe that Congress intended 'package' to be defined in a way to produce such a result. The District Court was correct in holding that the tractor was not a 'package'." (Italics supplied.)

In *The Exiria* the tractor was not completely covered with the casing as were the steel rolls in the present case. It will be noted, however, that in *The Exiria* the courts did not consider that the extent of the covering was the controlling factor but rather that a tractor of such large size and weight cannot fairly be considered a package under a layman's ordinary construction.

The inconsistent views expressed by the two panels of judges in the Second Circuit, one in *The Exiria* and the other in the present case, suggest that decisions in future cases presenting the "package" question under the Carriage of Goods by Sea Act, will depend on how the Bench is constituted in the respective cases.

C.

The only other courts which have considered the question, have held that a large heavy, fully-boxed machine is not a "package" within the meaning of the Carriage of Goods by Sea Act.

That issue was squarely presented in the case of *S.p.A Fiat v. American Export Line*, which was litigated in the Italian Courts. There a fully boxed lathe was negligently damaged on a voyage from Genoa to New York. The trial court (Superior Court of Genoa), in ruling that a 25 ton boxed lathe was not "within the concept of a package" and that, therefore, the $500 per package limitation of the U. S. Carriage of Goods by Sea Act was inapplicable, said:

> "Accordingly, the packing may not be considered the sole and essential element of the concept of 'package'. In addition to the elements of wrapping and handling, it appears logical that there should be included in the concept of 'package' * * * the elements of the size of the thing carried and of its weight" (R., Vol. I, pp. 54-55).

This decision was affirmed (July 4, 1959) by the Court of Appeals of Genoa (R., Vol. I, p. 68). Both opinions in the *Fiat* case are set out in full in petitioner's appendix; trial court opinion (R., Vol. I, pp. 42-56); appellate court opinion (R., Vol. I, pp. 57-68).

Although the Supreme Court of Cassation of Italy remanded the *Fiat* case to the trial court, that action was not taken because of error in the rulings of the two lower courts that a fully boxed piece of machinery weighing 25 tons, is not a "package" under Sec. 4(5) of the U. S. Carriage of Goods by Sea Act. The case was remanded for the specific purpose of having the trial court reconsider the question of the carrier's liability on the basis of the application of the text of the Brussels Convention, 1924, on Bills of Lading, as applied by Italian law, instead of by the law of the United States construing the provisions of the U. S. Carriage of Goods by Sea Act. (This opinion is printed in full in R., Vol. I, pp. 69-78.)

D.

The courts below declined to apply the rules of construction adopted by this court in numerous decisions that the words of a statute are to be given their usual, natural, plain and commonly understood meaning: that they must not be construed to bring about an unreasonable and absurd result.

As early as 1832, this Court said in *Levy* v. *McCartee*, 6 Pet. 102, 110:

> "The legislature must be presumed to use words in their known and ordinary signification, unless that sense be repelled by the context."

That rule of construction has received continuing support:

> *Maillard* v. *Lawrence,* 16 Howard 250, 261;
> *Crane* v. *Commissioner,* 331 U. S. 1, 6-7, (1946).

In *Addison* v. *Holly Hill Fruit Products Co.,* 322 U. S. 607 (1944), this Court said (at p. 618):

> "After all, legislation when not expressed in technical terms is addressed to the common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has a right to rely on ordinary words addressed to him."

In *United States* v. *Katz,* 271 U. S. 354 (1926), this Court said (at p. 357):

> "All laws are to be given a sensible construction; and a literal application of a statute, which would lead to absurd consequences, should be avoided whenever a reasonable application can be given to it, consistent with the legislative purpose."

See, also:

> *Lynch* v. *Alworth-Stephens Co.,* 267 U. S. 364, 370 (1925);
> *Heydenfeldt* v. *Daney Gold, etc. Co.,* 93 U. S. 634 at p. 638 (1876).

In the present case the Court of Appeals deprecated the judgment of the "ordinary man," as the norm by which to ascertain the meaning of the statutory term "package,"

and declined to follow the rule so consistently applied by this Court. The Court of Appeals said (R. Vol. II, pp. 3, 4):

> "• • • the field of admiralty law is not an area in which the layman should venture to tread even if equipped with a Webster's Dictionary or Black's Law Dictionary. Black has defined a package as 'A bundle put up for transportation or commercial handling; a thing in form to become, as such, an article of merchandise or delivery from *hand to hand*'." (Italics supplied) • • •
>
> "But the layman's conception of a 'package' as something carried under the arm from the corner grocery store is of no significance in deciding what is a package as specified in 46 USCA. See 1304 (5)."

The reluctance of the Court of Appeals to subscribe to, and approve, the use of dictionaries in ascertaining definitions of words, is not shared by this Court for in *Crane* v. *Commissioner* (*supra*), Chief Justice Vinson, in writing for the Court in a case in which one of the disputes was as to "the construction to be given the term 'property' ", said (331 U. S. 1 at p. 6):

> "In the first place, the words of statutes • • • should be interpreted where possible in their ordinary, everyday senses. The only relevant definitions of 'property' to be found in the principal standard dictionaries are the two favored by the Commissioner • • •."

This Court's footnote to the above excerpt is as follows:

> "See Webster's New International Dictionary, Unabridged, 2d Ed.; Funk & Wagnall's New Standard Dictionary; Oxford English Dictionary."

There is no evidence that there is any accepted commercial meaning of the term "package". While respondent

contended in the Court of Appeals that "package" should be interpreted in its commercial sense, it offered no proof of the existence of a "commercial package" concept, as distinguished from "package" in its commonly accepted sense. Certainly no evidence is required to support the thesis that the "ordinary man" would not consider that such a ponderous, unwieldy and massive piece of cargo as is presented here, may fairly be described as a "package."

WHEREFORE, petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Court of Appeals for the Second Circuit, commanding that Court to certify and send to this Court for its review and determination on a date certain to be therein named, a full and complete transcript of the record and all proceedings of the case entitled on its docket No. 27507, "*Mitsubishi International Corporation, Libelant-Appellant*, v. *S.S. 'Palmetto State' and States Marine Corporation of Delaware, Respondent-Appellee*"; and that the said decree of the United States Court of Appeals for the Second Circuit be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Court may seem meet and just.

Dated: New York, N. Y., March 29, 1963.

Respectfully submitted,

MITSUBISHI INTERNATIONAL CORPORATION,
Petitioner,

By F. HERBERT PREM,
Attorney for Petitioner.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION.

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Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION.

QUESTION PRESENTED.

Whether large heavy cases containing cargo are packages within the terms of Section 4(5) of the Carriage of Goods by Sea Act of the United States [46 U. S. Code, Section 1304 (5)]—an Act governing the rights, immunities and limitations between shipper and carrier. Can a package cease to be a package because it is of large size and if so, where is the line to be drawn?

STATEMENT.

Petitioner sued in Admiralty in the United States District Court for the Southern District of New York to

recover $31,091.16 for damage to steel rolls contained in three completely boxed cases. Respondent cross-libeled to recover for damage to the vessel done by the steel rolls when they broke loose from within their cases.

The District Court held the respondent liable for damage to the steel rolls but limited petitioner's recovery to $500 per package or a total of $1500 in accordance with the provisions of Section 4 (5) of the Carriage of Goods by Sea Act. The Court dismissed the cross-libel.

Petitioner appealed to the Court of Appeals for the Second Circuit, which appeal presented the sole question as to whether the District Court was right in limiting liability to $500 per package. The Court of Appeals unanimously affirmed the District Court (R. Vol. II p. 1).

Petitioner sought further review by petitioning for rehearing *en Banc*. The petition for rehearing was denied by the Court *en Banc* consisting of nine judges. (R. Vol. II p. 23a). A memorandum signed by the chief judge stated "No active circuit judge having requested that the case be reheard *en Banc* the petition is denied" (R. Vol. II p. 22a).

Petitioner, who is the shipper of the goods, could have avoided any limitation by declaring the actual value of the goods and paying *ad valorem* freight as provided in the carrier's tariff. No valuation was declared and no extra freight was paid.

The "Statement" in Petitioner's Brief includes statements that are wholly immaterial to the Petition.

ARGUMENT.

PETITIONER ADVANCES SEVERAL REASONS FOR GRANTING THE WRIT. WE CONTEND THERE IS NOT ANY REASON WHATSOEVER FOR THE GRANTING OF A WRIT AND THE PETITION SHOULD BE DENIED.

A.

THE QUESTION PRESENTED IS NOT OF IMPORTANCE TO SHIPPERS OF CARGO.

The petitioner's first reason urged for granting the writ is that the question presented is of "vital importance to shippers" whose damage may be limited because of this "package limitation". There is not any merit whatever in this contention. Such limitation can be avoided by a shipper declaring the value of the goods and paying *ad valorem* freight in accordance with the terms of the statute. Presumably any such additional freight would be passed on to the consignee or buyer and ultimately to the consuming or buying public. The petitioner did not choose to declare the value or pay *ad valorem* freight.

In *John Deere & Company* v. *Mississippi Shipping Company*, 170 Fed. Supp. 479 (E. D. La. 1959) the Court held an ocean carrier's liability for damage in the amount of $2,961.16 done to a fully boxed tractor was limited to $500. Judge J. Skelly Wright at pages 481, 482 said:

> "The Act thus gives the shipper an option to avoid the limitation of liability and make the carrier the insurer of the cargo. To exercise this option effectively, the shipper must declare the value of the cargo, insert the declared value in the bill of lading and pay a higher freight rate.
>
> . . . . . .

"Having failed to exercise his option in the prescribed manner, he now asks this Court to relieve him of the limitation he thus accepted."

Another reason this contention of petitioner is without merit is that long before the passage of the Carriage of Goods by Sea Act almost all ocean bills of lading contained similar package limitation clauses which have been consistently upheld by this Court for many years. *Reid* v. *Fargo*, 241 U. S. 541 (1916); *Calderon* v. *Atlas SS. Co.*, 170 U. S. 272 (1898); *The Ansaldo San Giorgio*, 294 U. S. 494 (1934).

In *Reid* v. *Fargo* this Court upheld a bill of lading clause limiting liability to $100 per package unless a value in excess were declared and extra freight that may be agreed on paid, and held the carrier's liability was limited to $100 where a boxed automobile was damaged to the extent of $2724.40.

In England, a Court held as long ago as 1874 that a wagon containing valuable paintings which was loaded on a railroad train was a package under the limitation statute there applicable. *Whaite* v. *Lancashire & Yorkshire R. R. Co.* (1874) L. R. 9 Ex. 67. In that decision, Cleasby, B. said: "It would be absurd to say that the wagon was too large to be a package; plainly, size cannot be a criterion."

Our Courts have repeatedly held large objects to be packages or subject to the $500 limitation. *The SS. Margaret Lykes*, 1944 A. M. C. 1128 (E. D. N. Y.) (not otherwise reported)—an unboxed truck; *Stirnimann* v. *SS. San Diego*, 148 F. 2nd 141 (2nd Cir.) 1945—amusement crane parts; *Middle East Agency* v. *John B. Waterman*, 86 F. Supp. 487 (S. D. N. Y.) 1949—rock crusher shipped in 21 parts, 5 on skids, 11 in crates, 4 in boxes, one part as such, all but the last held to be packages; *Petition of Isbrandsten*

Company, Inc., 201 Fed. 2nd 281 (2nd Cir.) 1953—railroad locomotives; *La Territorial de Sigueros, S. P.* v. *Shepard Shipping Company*, 124 F. Supp. 287 (E. D. N. Y.) 1954—rolls of rayon cord; *Autobuses Modernos S. A.* v. *Federal Mariner*, 125 Fed. Supp. 780 (E. D. Pa. 1954)—a motor bus weighing 15,000 lbs.; *John Deere & Company* v. *Mississippi Shipping Company, supra*—a boxed tractor.

Indeed, in *Gulf Italia Company* v. *The Exiria*, 263 Fed. 2nd 135 (2nd Cir. 1959), the Courts did not hold that a semi-boxed tractor weighing 43,319 lbs. was not a package because of its size, but because it was not completely boxed in or enclosed.

B.

THERE IS NOT ANY CONFLICT AMONG THE JUDGES OF THE COURT OF APPEALS FOR THE SECOND CIRCUIT ON THE QUESTION PRESENTED. IF THERE WERE SUCH CONFLICT, IT WOULD NOT BE A GOOD REASON FOR GRANTING THE WRIT.

Secondly, petitioner urges as a reason for granting the writ, that there is a conflict among the judges of the Court of Appeals for the Second Circuit.

Petitioner, failing to find any conflict between Circuits, suggests this Court should grant a writ because of a supposed difference of opinion on the question presented among the judges of the Court of Appeals. As we shall point out, there is not any such conflict with respect to the question presented among the judges of that Court, but we submit that even if there were such a conflict it would not be a reason for granting the writ. This Court, as far as we are aware, has never granted a writ of certiorari for that reason. Indeed, if such were the case it would follow that whenever a judge of any of the Courts of

Appeals dissented from the Court's decision, a writ should be granted.

Furthermore, it is clear there is not any conflict between the judges of this Court of Appeals. All nine active judges of the Court considered petitioner's application for rehearing and not any of the judges indicated a wish for a rehearing (R. Vol. II p. 23a). There was not any disagreement or dissent.

The only case cited by petitioner on this point, *Gulf Italia Company* v. *American Export Lines, Inc.*, 263 F. 2d 135 (2nd Cir. 1959), is clearly distinguishable. That decision did not involve a fully boxed item. The carrier sought to describe a tractor with its treads entirely exposed and having a covering only on its superstructure as a "package". Compare *John Deere & Company* v. *Mississippi Shipping Co., supra,* where a *fully boxed* tractor was considered a package.

It may also be noted that Circuit Judge Kaufmann sat on the *Gulf Italia, supra,* decision, yet was not interested in a rehearing of this decision. Indeed both the District Court and the Court of Appeals below discussed the *Gulf Italia* in their opinions and found no conflict. In view of this, the lack of any dissent, and the denial of a rehearing by all of the Circuit Judges, petitioner is clearly incorrect in claiming there is a conflict among the Circuit Judges.

C.

THE DECISION OF THE ITALIAN COURT REFERRED TO BY PETITIONER IS NO REASON WHATEVER FOR GRANTING THE WRIT.

Petitioner makes much of the decisions of an Italian trial and intermediate Appellate Court. It seems surprising that petitioner should suggest that this Court

grant a writ of certiorari because such decisions conflict with the decision of our Court of Appeals in this case. Furthermore, those decisions were reversed by the Supreme Court of Cassation of Italy which remanded the case to the lower court to reconsider the question on the basis of the applicable statute, being the Brussels Convention of 1924 as applied by Italian law instead of our Carriage of Goods by Sea Act.

D.

The decisions of the District Court and the Court of Appeals below were correct and the statute was properly construed.

In urging that the Courts below did not apply the rules of construction adopted by this Court, the petitioner quite mistakenly considers that the words of this statute, dealing with the carriage of cargoes and goods in ocean commerce, should be construed as if addressed to the common layman. On the contrary, this statute is to be construed as if addressed to shippers, carriers and persons concerned with commercial matters, and particularly with the ocean carriage of goods and cargoes.

Black's Law Dictionary, 4th ed. 1951 includes this definition:

> "Package. A bundle put up for transportation or commercial handlings; * * *. A parcel is a small package; 'parcel' being the diminutive of 'Package'. * * * *As ordinarily understood in the commercial world, it means a shipping package.*" (Emphasis added)

A commercial dictionary, namely, *The International Maritime Dictionary* (D. Van Nostrand Company, Inc.

1948) defines package cargo: "Cargo packed in boxes, barrels, crates, wrapped goods, machinery. Also called package freight."

Mr. Justice Frankfurter said in an article "*Some Reflections on the Reading of Statutes,*" 47 Col. L. R. 527, 536 (1947) that:

> "Statutes are not archaeological documents to be studied in a library. They are written to guide the actions of men. As Mr. Justice Holmes remarked upon some Indian legislation: 'The word was addressed to the Indian mind.' If a statute is written for ordinary folk, it would be arbitrary not to assume that Congress intended its words to be read with the minds of ordinary men. If they are addressed to specialists, they must be read by judges with the minds of specialists."

It seems preposterous to suggest, as petitioner does, that the word "package" contained in this commercial legislation should be given the same and limited meaning as that given to something one would carry home under his arm, or as Judge Moore said below: "But the layman's conception of a 'package' as something carried under the arm from the corner grocery store is of no significance in deciding what is a package, as specified in 46 U. S. C. A. Sec. 1304 (5). No layman would have agreed with the three British jurists who were so certain that a wagon was a package."

Furthermore, it is perfectly clear that Congress intended that the word "packages" should be given the meaning that the Courts below have given it. As we heretofore pointed out, long prior to this Act this Court had upheld package limitation clauses contained in ocean bills of lading. *Calderon v. Atlas S. S. Co., supra; The Ansalda San Giorgio, supra;* and this Court has applied the limitation

to packages large and small. *Reid* v. *Fargo, supra.* Congress in adopting the Carriage of Goods by Sea Act was aware of such decisions as *Reid* v. *Fargo* and intended that the word "package" should include such cases as are involved in this suit. This is made plain by examining the record of the Hearings before the Committee on Commerce, United States Senate, 74th Congress First Session, on a Bill relating to Carriage of Goods by Sea, May 10, 1935 at pages 38 and 39:

> "The Chairman: Can you make reference, Colonel Barber, to that page of memorandum, so that the record will show it? I am anxious only that the record should be clear on it, because you have to bear in mind most of us are laymen so far as shipping terms are concerned, and it would be well if we knew the reasons for those things.
>
> "Mr. Barber: There is a brief supporting argument on that * * *:
>
> " 'Limitation of Liability. The Harter Act makes no direct reference to valuation clauses. Limitation of liability, however, is permitted, provided it falls short of relieving the carrier from all responsibility for loss or damage arising from the negligence of himself or his servants. Hence it was assumed in a case before the United States Supreme Court that a liability limited to $100 on a car worth $3900 was not improper. The White Bill imposes a liability of $500 per package or customary freight unit; with the parties free to agree upon a higher figure if they wish.'
>
> "Mr. Walter: If I may take up following that, you will note on page 9 of the bill where we fix the maximum amount of *$500 per package*, we say that is supplemented the lines 13 to 18 referred to by the chairman, where we may agree on something higher than that.

> "In other words, *it may be an automobile in the package, and it will be worth considerably more than $500*, and there the primarily interested parties wanted that ante raised." (Emphasis added.)

And in hearings held before another committee, namely, hearings before the Sub-Committee of the Committee of Foreign Relations of the United States Senate, December 22, 1927, the following appears at pages 9-10:

> "Senator Edge: * * * I would like to be assured on that. You say that they can drop overboard a Rolls Royce car and hand me $500 in full amount of damages."
>
> "Mr. Haight: * * * you can get just what the bill of lading says they have to pay you, and no more."

The question is simply—who is going to bear the risk? The following excerpt from the "Report of the Hearing before the Committee on the Merchant Marine and Fisheries", House of Representatives, on March 3, 4, 5 and 10, 1930, at page 34, exemplifies what was before Congress:

> "Mr. Davis: Why should not they be liable for the full value of the package? $500 might be sufficient in most cases, but suppose there is a package worth $50,000, what would $500 recovery amount to?
>
> "Mr. Haight: All you have to do is go to the carrier and say, 'this package is worth $50,000'.
>
> "Mr. Bland: If he declares the value, they are liable?
>
> "Mr. Haight: All he has to do is to declare the value and pay a higher freight rate.
>
> "Mr. Sloan: The provision for that thing is right there."

It is clear that the Courts below were correct and that there are no grounds for granting a writ.

CONCLUSION.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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